IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.893 OF 2006

Damodar Vinayak Kadekar ...Appellant

vs.

Gajanan Dattatray Kadekar & Anr. ...Respondents

Mr.Rahul Walvekar for the Appellant
Mr.Sanjay Prabhu for the Respondents.

CORAM: A.S.OKA,J.
DATE : JULY 6, 2007.

P.C.:

1. Heard learned Advocate for the Appellant. The Appellant is the original Plaintiff. The Trial Court dismissed the suit for perpetual injunction filed by the Appellant and the Appellate Court has confirmed the decree of the Trial Court.

2. The case made out by the Appellant is based on the last will of one Laxmibai. The Appellant claims to be the owner of the suit property on the basis of the said will. The finding of the Appellate Court is that no attempt was made by the Appellant to prove the said will.

3. The submission of the learned Advocate for the Appellant is that the execution of the will was admitted by the first Defendant in R.T.S. proceedings. He submitted that as in the said proceedings the will was not disputed, it was not necessary for the Appellant-Plaintiff to prove the will.

4. I have considered the submissions. The entire claim of the Appellant-Plaintiff is based on the will. In the written statement filed by the first Defendant, the execution of the will was specifically denied. Therefore, it was the duty of the Appellant-Plaintiff to prove the will in accordance with the provisions of the Indian Evidence Act,1872. Admittedly, that has not been done.

5. No substantial question of law arises. Second Appeal is accordingly dismissed with no order as to costs.

JUDGE